

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE, JURISDICTION

CRIMINAL APPLICATION NO. 8032 OF 2005

IN

CRIMINAL APPEAL No.943 OF 2005

Uday Narayan Khot,
Age: 25 years, Occ.Clerk in local
School, R/o at & Post - Kadave,
Tq.Shahuwadi, Dist.Kolhapur.
(At present lodged at Kalamba
Central Prison, Kolhapur)

.....APPLICANT/
APPELLANT
(Orig.Accused No.1)

Versus

The State of Maharashtra

....RESPONDENT

....

Mr.N.V.Pradhan with Ms.Ameeta Kuttikrishnan
Advocates for Applicant.

Mrs.Usha Kejariwal, A.P.P. for the State.

Mr.S.V.Marwadi Advocate for Orig.Complainant.

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**CORAM : N.V.DABHOLKAR &
SMT.V.K.TAHILRAMANI, JJ.**

DATED : MARCH 01, 2006.

P.C.:

. Heard Mr.Nitin Pradhan learned Advocate for
the applicant (original accused No.1), Mrs.Usha
Kejariwal learned A.P.P for the State and
Mr.Marwadi learned Advocate for original
complainant.

2. The applicant has been convicted under Section 302 of IPC and sentenced to suffer life imprisonment. The applicant is now seeking bail.

3. The incident in the present case has taken place on 27-10-2000. The role played by the applicant in the incident is brought out in the evidence of two injured witnesses i.e. P.W.8 Pandit Khot, who is the complainant in the present case and P.W.9 Sarjerao Khot, who is the other injured witness. Besides these two witnesses there is one other eye witness in the present case i.e. P.W.10 Vijay Khot.

4. P.W.8 Pandit Khot has stated that on the said day, the applicant alongwith others came near their house in a Jeep. The applicant was holding a Gun. The applicant and others started coming towards them i.e. the complainant and others. At that time, the applicant fired a gun shot towards them. The said gun-shot did not hit anybody. On complainant and others coming to know that the applicant and others had come to assault them, they ran away to save their lives. At that time

:3:

Rangrao (deceased), who is the brother of complainant was running towards water-tank. At that time the applicant fired a gun-shot from his gun. The said gun-shot hit Rangrao, who fell down. The gun-shot fired by the applicant hit Rangrao on his back on the right side and it caused the below mentioned injury:

"Circular wound right side back. 1 1/2 inches in diameter 1 inch below inferior angle of scapula."

5. The evidence of P.W.9 Sarjerao Khot and P.W.10 Vijay Khot is on the same lines as that of P.W.8 Pandit Khot. The evidence of these witnesses is corroborated by the medical evidence.

6. Mr.Pradhan has submitted that it is a case of private defence. Thus, it is seen that it is admitted on behalf of the applicant that he was present at the spot and that he had fired gun-shot at Rangrao, which has resulted in his death. However, Mr.Pradhan has submitted that the said injury was caused while exercising the right of private defence.

7. In support of his contention that the injury was caused while exercising right of private defence, Mr.Pradhan submitted that a cross-case has been registered which is C.R.No.124 of 2000. The present case is registered as C.R.No.123 of 2000. Mr.Pradhan has placed reliance on the First Information Report in C.R.No.124 of 2000. In the said case, the present applicant is the complainant. Mr.Pradhan has submitted that the said First Information Report shows that the gun-shot was fired at Rangrao as Rangrao had earlier fired two gun-shots in the direction of the applicant and others. However, both these gun-shots did not hit anybody. As far as this contention is concerned, Mrs.Kejariwal, on the other hand, has drawn our attention to the evidence of the applicant, who has been examined as P.W.7 in the cross-case. From the evidence of the present applicant in the cross-case, she has pointed out that, the present applicant has stated thus :

".....It did not happen that Rangrao went inside the house and brought the rifle.

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.....I have not stated before Police that Rangrao fired two bullets from his rifle to me.

.....It did not happen that I thought that they will not keep alive us and so I took rifle from the hand of my brother Darasing and shot the bullet to Rangrao and Rangrao sustained injury and fell down."

. However, we have noticed that the First Information Report as well as the evidence of the applicant in the cross-case are not part of the record in the present case. Hence, in such case, we cannot look into both these documents.

8. At this stage, we may also add that Mr.Pradhan has contended that it is a case of exercise of right of private defence. However, we find that nowhere in his statement under Section 313 of the Cr.P.C., the applicant has taken such a stand. Thus it appears that this stand is taken belatedly at this stage.

9. Moreover, the stand taken on the part of the applicant is belied by the evidence, specially the medical evidence, on record. P.W.11 Dr.Mansing Ghatge had conducted post-mortem on the dead body of deceased Rangrao. P.W.11 Dr.Ghatge has clearly stated that he found circular wound on the right side back. Thus, it is clear that gun-shot has been fired on the back of Rangrao, as is seen from the evidence of P.W.11 Dr.Ghatge as well as the post-mortem report. There is no exit injury to the entry point which was on the back. From this it is seen that Rangrao was not in a position to fire any shot or to be on the offensive, but, infact he was defending himself by running away from the spot, when he was hit by the gun-shot fired by the present applicant. Looking to the fact that gun-shot injuries are on the back of Rangrao, this injury cannot be said to be compatible with the defence taken on behalf of the applicant that it was a case of exercise of right of private defence.

10. As stated earlier, the evidence of three witnesses i.e. P.W.8, P.W.9 & P.W.10 clearly shows that it was the applicant who fired at Rangrao. No case of right of private defence or

excessive use of private defence is made out from the evidence on record.

11. The applicant has been involved in three other cases. The said cases are C.R.No.113 of 1994, C.R.No.39 of 1997 and C.R.No.51 of 1999. All the cases are of Shahuwadi Police Station. C.R.No.113 of 1994 is under Sections 379, 447 r/w 34 of IPC, C.R.No.39 of 1997 is under Sections 326, 323 r/w 34 of IPC, and C.R.No.51 of 1999 is under Sections 457, 454 & 380 of IPC.

12. Thus, looking to the role played by the applicant and the other facts and circumstances of this case, we are not inclined to grant bail to the applicant. Application for bail is rejected.

13. Liberty to apply for fixed date of hearing after the paper-books are ready.

(N.V.DABHOLKAR,J.)

(SMT.V.K.TAHILRAMANI,J.)